IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	**CRIM. NO. 18-00300-CG**
	)	
JAMES B. BRADDY,	)	
	)	
Defendant	)	

ORDER

This matter is before the Court on Defendant's motion to suppress evidence (Doc. 34), the Government's opposition thereto (Doc. 40), Defendant's amended post-hearing memorandum (Doc. 59), the Government's Amended response to Defendant's post-hearing memo (Doc. 66), and Defendant's supplemental brief (Doc. 70). An evidentiary hearing was held on the motion on December 12, 2018. The evidence presented included dash cam videos of the traffic stop that led to the seizure at issue. For the reasons explained below, the Court finds that the motion to suppress should be denied.

DISCUSSION

Defendant moved to suppress evidence seized and statements made by the Defendant as a result of a traffic stop of the Defendant by Officer Austin Sullivan on September 27, 2018. Defendant contends that (1) Officer Sullivan did not have probable cause to conduct the traffic stop; (2) Officers did not possess reasonable suspicion to conduct a general criminal investigation beyond the initial traffic stop or to prolong the traffic stop beyond the necessary time for the traffic stop; and (3)

there was no probable cause to search Defendant's vehicle because the drug detection dogs did not positively alert.

I. Probable Cause for Traffic Stop

"The Fourth Amendment protects individuals from unreasonable search and seizure." *United States v. Harris*, 526 F.3d 1334, 1337 (11th Cir. 2008) (citation omitted). A traffic stop, "is constitutional if it is either based upon probable cause to believe a traffic violation has occurred or justified by reasonable suspicion in accordance with *Terry [v. Ohio]*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 [(1968)]." *Harris*, 526 F.3d at 1337. "Probable cause exists where the facts and circumstances within the collective knowledge of the law enforcement officials, of which they had reasonably trustworthy information, are sufficient to cause a person of reasonable caution to believe an offense has been or is being committed." *United States v. Jimenez*, 780 F.2d 975, 978 (11th Cir. 1986) (citation omitted).

Officer Sullivan testified that he pulled Defendant over based on a violation of Alabama Code § 32-6-51, which provides that vehicles must have a plainly visible license plate (tag) on the rear of the vehicle. *See* ALA. CODE § 32-6-51 (1975). When Officer Sullivan encountered the Defendant's vehicle on September 27, 2018, Defendant's tag was not plainly visible because it was partially obscured by two bicycles on a bicycle rack attached to the rear bumper of the vehicle. Officer Sullivan testified that he could see the tag to the extent that he could determine that it was a Florida State license plate. Officer Sullivan testified that while he was familiar with Alabama law regarding license plates, he had no knowledge of Florida

law regarding license plates.

> The Alabama statute at issue states the following:
>
> Every motor vehicle operator who operates a motor vehicle upon any city street or other public highway of or in this state shall at all times keep attached and plainly visible on the rear end of such motor vehicle a license tag or license plate as prescribed and furnished by the Department of Revenue at the time the owner or operator purchases his license.
>
> Anyone violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be punished by fine not exceeding $500.00 and, in addition thereto, shall be prohibited from driving a motor vehicle in Alabama for a period of not less than 60 days nor more than six months.

ALA. CODE § 32-6-51. Defendant asserts that the above statute does not apply to Defendant's vehicle because Defendant was not a resident of Alabama and Officer Sullivan saw that the vehicle had a Florida license plate. Section 40-12-262 of the Alabama Code provides:

> The provisions of the foregoing sections relative to registration and display of registration numbers shall not apply to a motor vehicle owned by a nonresident of this state and not used for hire or used for commercial purposes in this state for a period of 30 days from date of entering the state; provided, that the owner thereof shall have complied with the provisions of the law of the foreign country, state, territory, or federal district of his residence relative to the registration of motor vehicles and the display of registration numbers thereon and shall conspicuously display his registration number as required thereby; ...

ALA. CODE § 40-12-262(a). The Government argues that the officer correctly construed §32-6-51 and asserts that § 40-12-262 does not apply to provisions in Title 32. Section 32-6-51 does not indicate it is limited to Alabama license plates and Section 40-12-262, which falls under Title 40 "Revenue and Taxation," states that it

applies to "provisions of the foregoing sections..." The basis for the stop was not a violation of a section in Title 40. However, since the title of § 40-12-250 states that it relates to, among other things, the "display of tags on nonresidents," it is not clear that § 40-12-250 does not apply. That determination is not necessary here because even if Defendant is correct that Alabama law does not prohibit a non-resident driver from obscuring portions of his license plate, the stop was not unlawful if the officer's literal interpretation of the statute and contrary conclusion was "objectively reasonable." *See United States v. McCullough*, 851 F.3d 1194, 1201 (11th Cir.), cert. denied, 137 S. Ct. 2173 (2017) (citation omitted) (finding that the presence of an appellate decision concluding that under ALA. CODE § 32-6-51 only alphanumeric symbols must be plainly visible is not dispositive of whether an officer's contrary interpretation is objectively reasonable). "[A]n officer conducts a valid traffic stop even if he makes an 'objectively reasonable' mistake of law—such as incorrectly believing the law requires all brake lights to be operational instead of just one. *Id.* (citation omitted). Here, the officer's understanding that § 32-6-51 requires all tags to be visible was reasonable. Thus, the Court finds that Officer Sullivan had probable cause to conduct the traffic stop.

II. Reasonable Suspicion to Prolong Traffic Stop

Defendant contends that the officers did not have reasonable suspicion to conduct a general criminal investigation beyond the initial traffic stop or to prolong the traffic stop beyond the necessary time for the traffic stop. During a traffic stop, officers "do not have unfettered authority to detain a person indefinitely" and

"cannot unlawfully prolong a stop." *United States v. Campbell*, 2019 WL 125649, at *6 (11th Cir. Jan. 8, 2019) (citation omitted). "[T]he scope of the stop 'must be carefully tailored to its underlying justification.' " *Id.* (quoting *Rodriguez v. United States*, —— U.S. ——, 135 S.Ct. 1609, 1614 (2015)).

> Thus, in the context of a traffic stop, "the tolerable duration of police inquiries ... is determined by the seizure's mission[.]" *Rodriguez*, 135 S.Ct. at 1614 (quotation omitted). The mission of a traffic stop is "to address the traffic violation that warranted the stop ... and attend to related safety concerns[.]" *Id.* The stop may "last no longer than is necessary" to complete its mission. *Id.* (quoting *Royer*, 460 U.S. at 500, 103 S.Ct. 1319). In other words, "[a]uthority for the seizure ... ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Id.*

Campbell, 2019 WL 125649, at *6. An officer may conduct "ordinary inquiries incident to [the traffic] stop." *Id.* at *7 (quoting *Rodriguez,* 135 S.Ct. at 1615). These inquiries include "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance" to ensure "that vehicles on the road are operated safely and responsibly." *Id.* (quoting *Rodriguez*, 135 S.Ct. at 1615). Absent "reasonable suspicion," an officer cannot use a dog to search for contraband, ask unrelated questions, such as about a passenger's gang affiliation, or conduct "other measures aimed at detecting criminal activity more generally" unless the question or activity does not add time to the stop. *Id.* (citations omitted). The length of the delay and the timing of an unrelated conduct is immaterial, as even a *de minimis* delay that occurred before an officer had completed ordinary traffic stop inquiries may be unlawful. *Id.* at *9. An officer is not prohibited from engaging in any

conduct that in any way slows the officer from completing the stop as fast as humanly possible, but merely from "prolonging a stop to investigate other crimes." *Id.* (citing *Rodriguez*, 135 S.Ct. at 1616). "[T]o unlawfully prolong, the officer must (1) conduct an unrelated inquiry aimed at investigating other crimes (2) that adds time to the stop (3) without reasonable suspicion." *Id*

"A traffic stop may be prolonged where an officer is able to articulate a reasonable suspicion of other illegal activity beyond the traffic offense." *United States v. Perkins*, 348 F.3d 965, 970 (11th Cir. 2003). "While 'reasonable suspicion' is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification." *Id.* (citing *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000).

Here, the officers' questions about Defendant's travel plans are ordinary inquiries incident to a traffic stop. *See Campbell*, 2019 WL 125649, at *10. Even if when the officer asked the questions he suspected Defendant may be engaged in criminal activity unrelated to the traffic stop, the officer's subjective motivations are not to be considered. *Id.* at n.15 (citation omitted). Officer Sullivan became suspicious initially because the Defendant drove in a relaxed posture but immediately sat straight up upon seeing the officer drive up next to him. (Doc. 56, p. 44). That conduct alone was not sufficient to raise a reasonable suspicion.

Upon being stopped for the traffic violation, the Defendant reportedly exhibited extreme nervousness even after the Officer told the Defendant he was

going to give the Defendant a warning citation rather than a ticket. Officer Sullivan testified that the Defendant was a lot more nervous than the average motoring public. (Doc. 56, p. 51). Nervousness alone may be insufficient to establish reasonable suspicion, since "a traffic stop is an unsettling show of authority that may create substantial anxiety." *Perkins*, 348 F.3d at 970 (citation and internal quotations omitted).

In the instant case, the Government contends that reasonable suspicion existed because in addition to the Defendant's nervousness, the Defendant's story to the officer about his travel and the fact that the vehicle was not registered to him supported reasonable suspicion. The Defendant's vehicle was not registered to him or a family member, but to a person he reportedly did business with. Officer Sullivan asked about the two bikes attached to the back of the vehicle while the Defendant was looking for the registration and insurance paperwork and again later after the Defendant got out of the car.[1] The Defendant said he did not own the bikes, but "we" ride them. The bikes were covered in grime and did not appear to be in rideable condition. Officer Sullivan continued to ask about the information on Defendant's license and noted that the Defendant's license did not have a street address, but instead had a P.O. Box listed. The Defendant explained that his brother was in law enforcement and that in Florida the family of law enforcement can use a P.O. Box on their license. Officer Sullivan was not aware of P.O. Boxes

[1] The Court notes that the bikes and their placement over the vehicle's license plate was the reason for the traffic stop. Additionally, inquiries about the bikes do not appear to be aimed at investigating other crimes.

being allowed for the address on a license. Officer Sullivan asked the Defendant if he had any weapons in the car and the Defendant said he did not.[2] Officer Sullivan asked the Defendant to step out of the vehicle and come back to the Officer's vehicle where the Officer could get all the correct information and run his license and registration and do a warrant check on the computer. (Doc. 56, pp. 13-14). Officer Sullivan testified that it was "first thing in the morning" so Sullivan had to log in to his computer and as soon as everything was logged in and up and running Officer Sullivan ran the Defendant's information through certain databases. (Doc. 56, p. 47).[3] While the Defendant sat in Officer Sullivan's vehicle, Officer Sullivan continued to ask about Defendant's travel plans, about who owned the vehicle he

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[2] Courts have held that during a traffic stop an officer may ask whether there are any guns in the car to ensure the officer's safety and the safety of others. *See e.g. United States v. Maxwell*, 141 F. App'x 878, 881 (11th Cir. 2005) (holding that it was reasonable for an officer to inquire if the driver had any weapons in the car in order to ensure the officers safety); *United States v. Farmer*, 2008 WL 2397597, at *3 (M.D. Fla. June 10, 2008) ("It is well established that officers conducting a traffic stop may 'take such steps as are reasonably necessary to protect their personal safety.' " (citation omitted)).

[3] The Defendant objects to the fact that the Officer checked multiple data bases and that one of the data bases, BLOC (which is reportedly a function of the Gulf Coast High Intensity Drug Trafficking Area), was not directly related to traffic law enforcement. However, the Court finds it was reasonable to check multiple data bases for the officer's safety and safety of others as they may not all have the same information and the evidence has not shown that requesting the information from multiple data bases prolonged the stop. Inputting the information into a second data base while the officer is waiting for a response from the first does not add any time. *See United States v. Viezca*, 555 F. Supp. 2d 1254, 1262 (M.D. Ala. 2008), aff'd sub nom. *United States v. Ubaldo-Viezca*, 398 F. App'x 573 (11th Cir. 2010) (finding officer was justified in completing the traffic investigation through BLOC stating:"[P]olice officers conducting a traffic stop may 'prolong the detention to investigate the driver's license and the vehicle registration, and may do so by requesting a computer check.' " quoting *United States v. Boyce*, 351 F.3d 1102, 1106 (11th Cir. 2003)).

was driving and why the Defendant was using it, and about Defendant's brother being in law enforcement. The Defendant seemed confused or was evasive about where he was going, why he was traveling, who owned the vehicle, and what his brother did in law enforcement. The Defendant made and received phone calls on his cell phone while Officer Sullivan inputted information into his computer and waited for results. While on the phone, the Defendant told the person on the phone what was going on and where he was located on the highway, which made Officer Sullivan concerned about officer safety. Other officers arrived while Officer Sullivan was running the checks and Officer Sullivan asked Lieutenant Cully to run his canine around the Defendant's vehicle while he waited. (Doc. 56, pp. 14-15). Officer Sullivan saw Lieutenant Cully's canine alert by lifting his paw to scratch at the vehicle as he approached the side of Defendant's vehicle. (Doc. 56, pp. 15, 24-25). Another Officer got into Officer Sullivan's vehicle and continued with the computer traffic citation check while Sullivan got out and searched the exterior of Defendant's vehicle with Sullivan's canine. (Doc. 56, pp. 16-17). According to Sullivan, his canine also alerted to the odor of narcotics on the Defendant's vehicle. (Doc. 56, pp. 17-19, 28-30).

The Court finds that Officer Sullivan had a reasonable suspicion based on the Defendant's behavior and extreme nervousness, the Defendant's apparent difficulty in explaining his travel plans and circumstances and the irregularities with the Defendant's driver's license and vehicle. Even if that was not sufficiently suspicious to support further investigation of other crimes, Officer Sullivan was clearly able to articulate a reasonable suspicion of illegal activity when he witnessed Lieutenant

Cully's canine alert on the Defendant's vehicle. That suspicion was further substantiated when Sullivan's canine alerted. Prior to that time Officer Sullivan stayed within the mission of the traffic stop by addressing the traffic violation that warranted the stop and attending to related safety concerns. The Court finds that the stop lasted no longer than was necessary to complete the mission until a reasonable suspicion arose and the officers were justified in investigating further. The officers did not conduct unrelated inquiries aimed at investigating other crimes that added to the stop until they had a reasonable suspicion.

III. Probable Cause to Search Defendant's Vehicle

Defendant contends that there was no probable cause to search his vehicle because the drug detection dogs did not positively alert. The Supreme Court has explained the requirements for a drug dog's alert to confer probable cause, stating that "evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert." *United States v. Burrows*, 564 F. App'x 486, 492 (11th Cir. 2014) (quoting Florida v. Harris, 568 U.S. ——, 133 S.Ct. 1050, 1057 (2013). "Therefore, when 'a bona fide organization has certified a dog after testing his reliability in a controlled setting, a court can presume (subject to any conflicting evidence offered) that the dog's alert provides probable cause to search.' " *Id.* (citing *Harris*, 133 S.Ct. at 1057). "A court may also make this presumption 'even in the absence of formal certification, if the dog has recently and successfully completed a training program that evaluated his proficiency in locating drugs.' " *Id.* (citing *United States v. Sentovich*, 677 F.2d 834,

838 n. 8 (11th Cir.1982) (stating "training of a dog alone is sufficient proof of reliability")).

In the instant case, the officers testified that the dogs were trained and certified and that the officers had extensive training with the dogs. Training records reflected annual certifications and weekly training for the officers and their dogs. Defendant presented an expert witness, Andre Jimenez, who opined that the training the dogs and officers received was not optimal. Jimenez testified that their training fell short primarily because the dogs were trained to alert using an "aggressive" behavior rather than a "passive" behavior and because the dash cam video showed the officers handled the dogs with little slack in the leash and their conduct tended to distract or confuse the dogs and interfere with the dogs' ability to search. Jimenez explained that "aggressive" alerts such as biting or scratching are more difficult to recognize than a "passive" alert such as sitting. Jimenez also disagreed with the officers' training concerning certain terminology and whether a drug dog is trained to indicate with an "odor alert" when the dog discovers the odor of narcotics as compared to a "final alert" when the dog is able to pinpoint the source of the odor. The parties agree that there is no single established national standard for the training, certification, or use of drug detection dogs.

There appears to be no dispute that the dogs were trained and that the dogs passed the testing standards of the training organization in their area but Jimenez disagrees with the training methods used and testified that he did not see a proper alert on the dash cam videos of the traffic stop. According to Jimenez, neither dog

provided a reliable alert. However, there were portions of the dog search that could not be seen on the videos. Additionally, the Court viewed the videos and it appeared to the Court that Cully's canine alerted in the manner in which the canine had been trained to alert by actively scratching at the defendant's vehicle. The officers also explained that the canines could not be given significant slack on their leash because the vehicle was located on the side of a busy highway and the ground on the other side of the vehicle had a steep incline. The Court finds that the videos support the officers' version of events.

The Court notes that Jimenez's testimony has previously been found to be incredible by certain Courts. *See e.g. United States v. Melchoir*,[4] Crim. No. 16-cr-03033-RGK-CRZ, Doc. 107 (D. Nebraska 2017) (finding the officer was in a better position to observe the totality of the things partially depicted in the video); *United States v. Morales*,[5] Case No. 14-40136 (D. Kansas 2015) (finding Jimenez's testimony was not consistent with the court's own observations and the testimony of the police officer); *United States v Nabavi*, 2017 WL 1207877 (D. Nebraska 2017) (finding Jimenez's testimony as to the correct way – and perhaps the only correct way- to train and certify a drug dog was not credible); *United States v. Hunsberger*, 2015 WL 7068727 (D. Nevada 2015) (placing little or no weight in Jimenez's opinion, finding instead that neither dog had been poorly trained, particularly considering that the training had been considered appropriate by independent

[4] A copy of the *Melchoir* decision can be found at Doc. 66-1 in the instant case.

[5] A copy of the *Morales* decision can be found at Doc. 66-2 in the instant case.

certifying agencies and the dogs engaged in continued training).

The Court also notes that Jimenez's income is derived from selling dogs he has trained, speaking, writing, and selling books about his method of dog training and consulting and providing testimony about dog training for defendants in criminal or forfeiture cases. For each case, Jimenez averages 8 hours of work prior to court at $250 per hour and for this case he spent three days travelling to or testifying in court at $2,000 per day for a total charge of about $8,000 on this case.

The Court finds that the Government has presented sufficient evidence to conclude that the drug detection dogs were reliable. The officers testified that the dogs indicated and alerted to the odor of narcotics being present in a way that was consistent with the officers' and the canines' training and certification. The Court finds that the officers were in a better position to observe and judge the actions of their canines both because they were in close proximity at the scene and because of their history of extensive training and familiarity with their canines. After considering the evidence presented and the arguments of the parties, the Court concludes that the canines' alerts gave the officers probable cause to search the Defendant's vehicle. The facts and circumstances are sufficient to cause a person of reasonable caution to believe an offense had been or was being committed.

For the reasons stated above, Defendant's motion to suppress evidence (Doc. 34), is **DENIED**.

DONE and **ORDERED** this 29th day of January, 2019.

/s/ Callie V. S. Granade
SENIOR UNITED STATES DISTRICT JUDGE